HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No. 785 of 2007

Between:

Alapati Radha Krishna Murthy

… Appellant

And

Southern Power Distribution Company of
A.P. Limited,
Rep. by its Chairman & Managing Director,
Tirupati & others.

… Respondents

:: J U D G M E N T ::

Counsel for the appellant : Shri K.N. Jwala for
Shri Sai Gangadhar Chamarthy

September 24, 2007

Per G.S. SINGHVI, C.J.

The appellant, who was appointed as Legal Counsel by the erstwhile Andhra Pradesh State Electricity Board (for short, 'the Board') at Ongole for a period of one year vide B.P.Ms.No.1264, dated 9-11-1977 and again vide B.P.Ms.No.54, dated 20-1-1979, and whose term was continued until further orders vide B.P.Ms.No.277, dated 23-4-1980, and who unsuccessfully challenged the appointment of respondent No.4 as Legal Counsel of Andhra Pradesh Southern Power Distribution Company Ltd. (APSPDCL), has filed this appeal under Clause 15 of the Letters Patent for setting aside order dated 20-

8-2007 passed by the learned Single Judge in Writ Petition No.17509 of 2007.

Sri K.N. Jwala, learned counsel for the appellant submitted that his client is not interested in forcing respondent No.1 to engage him as an advocate, but vehemently argued that the manner in which the said respondent brought about exit of his client ought to have been condemned by the learned Single Judge and a declaration ought to have been granted that the action of respondent No.1 is arbitrary, unfair and unreasonable. Learned counsel emphasised that the only reason which prompted respondent No.1 to bring about unceremonious and indirect removal of the appellant from the position of Legal Counsel is the filing of Writ Petition No.9419 of 2007 by him for recovery of the arrears of fee, and argued that the learned Single Judge committed a serious error by not pronouncing on the legality of the action taken by respondent No.1.

We have given serious though to the arguments of the learned counsel, but have not felt convinced. A conjoint reading of B.P.Ms.No.1264, dated 9-11-1977 and B.P.Ms.No.54, dated 20-1-1979 shows that the appellant was initially appointed as Legal Counsel of the Board for a period of one year with a clear stipulation that the appointment was terminable by one month's notice on either side. The tenure of his initial appointment was extended by one year and then till further orders on the same terms and conditions on which he was last appointed.

Since the terms and conditions on which the appellant was appointed as Legal Counsel did not preclude the Board and its successor to engage another counsel, the appointment of respondent No.4 vide proceedings dated 14.6.2007 had the effect of automatic termination of the term of the appellant.

In our considered view, the tenure appointment did not create any legal or vested right in favour of the appellant, which could be enforced by bringing legal action in the Court. The Board and its successor (respondent No.1 herein) could always bring an end to his appointment by giving one month's notice or by issuing any other order. Respondent No.1 adopted the alternative course by issuing order for appointment of respondent No.4, which, as mentioned above, has resulted in automatic termination of appellant's tenure.

To whom the legal work or cases should be entrusted lies in the exclusive domain of respondent No.1 and the appellant cannot claim that he should be entrusted with the particular work or that the work already entrusted to him should not be transferred to newly appointed Legal Counsel. Therefore, it is not possible to entertain his prayer for grant of a declaration that the action of respondent No.1 to appoint respondent No. 4 and to indirectly bring to an end his appointment/engagement as Legal Counsel is arbitrary, discriminatory or violative of the doctrine of equality enshrined in Articles 14 and 16 of the Constitution.

The nature of relationship between an advocate and his client has become subject matter of legal debate in several cases. In **State of U.P. v. U.P. State Law Officers Association**[1], the Supreme Court considered the question whether termination of the appointment of Law Officers in the State Government and public bodies in Uttar Pradesh was legally correct. While reversing the orders of the High Court, which had quashed the action of the State Government, the Supreme Court held:

> "Legal profession is essentially a service-oriented profession. The ancestor of today's lawyer was no more than a spokesman

who rendered his services to the needy members of the society by articulating their case before the authorities that be. The services were rendered without regard to the remuneration received or to be received. With the growth of litigation, lawyering became a full-time occupation and most of the lawyers came to depend upon it as the sole source of livelihood. The nature of the service rendered by the lawyers was private till the Government and the public bodies started engaging them to conduct cases on their behalf. The Government and the public bodies engaged the services of the lawyers purely on a contractual basis either for a specified case or for a specified or an unspecified period. Although the contract in some cases prohibited the lawyers from accepting private briefs, the nature of the contract did not alter from one of professional engagement to that of employment. The lawyer of the Government or a public body was not its employee but was a professional practitioner engaged to do the specified work. This is so even today, though the lawyers on the full-time rolls of the Government and the public bodies are described as their law officers. It is precisely for this reason that in the case of such law officers, the saving clause of Rule 49 of the Bar Council of India Rules waives the prohibition imposed by the said rule against the acceptance by a lawyer of a full-time employment.

The relationship between the lawyer and his client is one of trust and confidence. The client engages a lawyer for personal reasons and is at liberty to leave him also, for the same reasons. He is under no obligation to give reasons for withdrawing his brief from his lawyer. The lawyer in turn is not an agent of his client but his dignified, responsible spokesman. He is not bound to tell the court every fact or urge every proposition of law which his client wants him to do, however irrelevant it may be. He is essentially an adviser to his client and is rightly called a counsel in some jurisdictions. Once acquainted with the facts of the case, it is the lawyer's discretion to choose the facts and the points of law which he would advance. Being a responsible officer of the court and an important adjunct of the administration of justice, the lawyer also owes a duty to the court as well as to the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouthpiece of his client. This relationship between the

lawyer and the private client is equally valid between him and the public bodies."

The Supreme Court also considered the mode to be adopted for engaging counsel by the public bodies and observed:

"Over the years, the public sector has grown considerably, and with its extension and expansion, the number of lawyers engaged in the public sector has increased noticeably so much so that it can truly be said that today there is a public sector in the legal profession as well. The expansion of the public sector activities has necessitated the maintenance of a permanent panel of lawyers. Some of the lawyers are also in full-time employment of the public institutions as their law officers. The profile of the legal profession has thus undergone a change.

The Government or the public body represents public interests, and whoever is in charge of running their affairs, is no more than a trustee or a custodian of the public interests. The protection of the public interests to the maximum extent and in the best possible manner is his primary duty. The public bodies are, therefore, under an obligation to the society to take the best possible steps to safeguard its interests. This obligation imposes on them the duty to engage the most competent servants, agents, advisers, spokesmen and representatives for conducting their affairs. Hence, in the selection of their lawyers, they are duty-bound to make earnest efforts to find the best from among those available at the particular time. This is more so because the claims of and against the public bodies are generally monetarily substantial and socially crucial with far-reaching consequences.

The mode of appointment of lawyers for the public bodies, therefore, has to be in conformity with the obligation cast on them to select the most meritorious. An open invitation to the lawyers to compete for the posts is by far the best mode of such selection. But sometimes the best may not compete or a competent candidate may not be available from among the competitors. In such circumstances, the public bodies may resort to other methods such as inviting and appointing the best available, although he may not have applied for the post. Whatever the method adopted, it must be shown that the search for the meritorious was undertaken and the

appointments were made only on the basis of the merit and not for any other consideration."

While dealing with the judgment of **Shrilekha Vidyarthi v. State of U.P.**[2], wherein the doctrine of equality was invoked for nullifying the action of the Government to remove District Government Counsel and Additional/Assistant District Government Counsel, the Supreme Court observed:

> "As the facts narrated earlier show, out of 26 respondents-law officers, the period of contract of nine of them had expired and they were continued till further orders. The remaining seventeen had continued after the expiry of their initial term without even formal orders of extension. In other words, none of the 26 officers had any right to hold the office on the date of their removal, even under the initial terms of appointment which stipulated the contractual period. This is apart from the fact that the terms of the contracts also provided that the appointment could be terminated at any time without assigning reason. The reliance placed by the respondents in this behalf on **Shrilekha Vidyarthi v. State of U.P.** is misplaced for the obvious reason that the decision relates to the appointment of the District Government Counsel and the Additional/Assistant District Government Counsel who are the law officers appointed by the State Government to conduct civil, criminal and revenue cases in any court other than the High Court. Their appointments are made through open competition from among those who are eligible for appointment and strictly on the basis of merit as evidenced by the particulars of their practice, opinions of the District Magistrate and the District Judge and also after taking into consideration their character and conduct. Their appointment is in the first instance for one year. It is only after their satisfactory performance during that period that a deed of engagement is given to them, and even then the engagement is to be for a term not exceeding three years. The renewal of their further term again depends upon the quality of work and conduct, capacity as a lawyer, professional conduct, public reputation in general, and character and integrity as certified by the District Magistrate and the District Judge. For the said purpose, the

District Magistrate and the District Judge are required to maintain a character roll and a record of the work done by the officer and the capacity displayed by him in discharge of the work. His work is also subject to strict supervision. The shortcomings in the work are required to be brought to the notice of the Legal Remembrancer. It will thus be seen that the appointment of the two sets of officers, viz., the Government Counsel in the High Court with whom we are concerned, and the District Government Counsel with whom the said decision was concerned, are made by dissimilar procedures. The latter are not appointed as a part of the spoils system. Having been selected on merit and for no other consideration, they are entitled to continue in their office for the period of the contract of their engagement and they can be removed only for valid reasons. The people are interested in their continuance for the period of their contracts and in their non-substitution by those who may come in through the spoils system. It is in these circumstances that this Court held that the wholesale termination of their services was arbitrary and violative of Article 14 of the Constitution. The ratio of the said decision can hardly be applied to the appointments of the law officers in the High Court whose appointment itself was arbitrary and was made in disregard of Article 14 of the Constitution as pointed out above. What is further, since the appointment of District Government Counsel is made strictly on the basis of comparative merits and after screening at different levels, the termination of their services is not consistent with the public interests. We are, therefore of the view that the High Court committed a patent error of law in setting aside the order dated July 23, 1990 terminating the services of the respondents-law officers."

In **State of U.P. v. Johri Mal**[3], a three Judges Bench of the Supreme Court interpreted the provisions contained in U.P. Government Legal Remebrancer's Manual, referred to the earlier judgments in **Shrilekha Vidyarthi v. State of U.P.** and **State of U.P. v. U.P. State Law Officers Association** (supra) and observed:

"The nature of the office held by a lawyer vis-a-vis the State being in the nature of professional engagements, the courts are

> normally chary to overturn any decision unless an exceptional case is made out. The question as to whether the State is satisfied with the performance of its counsel or not is primarily a matter between it and the counsel. The Code of Criminal Procedure does not speak of renewal or extension of tenure. The extension of tenure of Public Prosecutor or the District Counsel should not be compared with the right of renewal under a licence or permit granted under a statute. The incumbent has no legal enforceable right as such. The action of the State in not renewing the tenure can be subjected to judicial scrutiny inter alia on the ground that the same is arbitrary. The courts normally would not delve into the records with a view to ascertain as to what impelled the State not to renew the tenure of a Public Prosecutor or a District Counsel. The jurisdiction of the courts in a case of this nature would be to invoke the doctrine of "Wednesbury unreasonableness."

In view of the above stated legal position, we do not find any valid ground to entertain the appellant's prayer to nullify the appointment of respondent No.4 or to indirectly ordain his continuance as Legal Counsel.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP.No.1570 of 2007 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, C.J.

24th September , 2007

C.V. NAGARJUNA REDDY, J.

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[1] (1994) 2 SCC 204

[2] (1991) 1 SCC 212
[3] (2004) 4 SCC 714